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IN THE

Supreme Court of the United States

October Term 1951

No. 172

ERIC G. KAUFMAN and AENNI C. KAUFMAN, *Petitioners*,

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A., Etc.

J. HOWARD MCGRATH, Attorney General of the United States, as successor to the Alien Property Custodian, GEORGIA NEESE CLARK, Treasurer of the United States, and REMINGTON RAND, INC., *Respondents*.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

MOTION BY RESPONDENTS TO TRANSFER THE CASE FROM THE SUMMARY DOCKET TO THE APPELLATE DOCKET AND TO ALLOW ONE HOUR OF ORAL ARGUMENT TO BE SHARED BY BOTH RESPONDENTS.

The Solicitor General, on behalf of the Attorney General, as successor to the Alien Property Custodian, respondent, and Roger J. Whiteford and John J. Wilson, counsel for Societe Internationale pour Participations Industrielles et Commerciales, S. A., etc., respondent, respectfully request that the above-entitled case be trans-

ferred from the summary docket to the appellate docket so that one hour of oral argument may then be allowed the respondents and may be shared between them.

This case may have been placed on the summary docket because of an apparent similarity to *Uebersee Finanz-Korporation, A. G., Petitioner* v. *J. Howard McGrath, Attorney General, as Successor to the Alien Property Custodian,* No. 178. At most, the two cases have one point in common; they are far more dissimilar than similar. Each case raises many issues, needful of full argument, which are in no wise raised in the other.

The major reason for this motion is that there are two respondents, the Attorney General as successor to the Custodian, and Societe Internationale, etc., the plaintiff in the underlying suit against the Custodian under Section 9(a) of the Trading with the Enemy Act, in which petitioners are seeking to intervene. The case between the plaintiff and the Custodian has an unusually complex nature and history which should be stated adequately for an understanding of the petition for intervention. Beyond this, the petition for intervention raises a number of procedural and substantive issues of the right to intervene generally, of the rights of minority stockholders to intervene in corporate litigation, of the right of stockholders to require their corporation to bring suit for the benefit of some only of the stockholders, and of the rights of minority stockholders to a share of the property vested from the corporation. Moreover, the Custodian and the corporate plaintiff have divergent interests as to some of the issues involved, requiring separate statement by each of them. The petitioners, minority stockholders in the plaintiff, and the plaintiff corporation necessarily have a relationship with each other in which the Custodian has no part. Accordingly, issues have arisen between the minority and the corporation which are of interest only to them. There are other issues which arise directly between the Government and the petitioning minority stockholders. One is the bearing on this case of the separate suit brought by the

petitioners against the Custodian in the District Court for the Southern District of New York, to which the corporation is not a party.

Rule 28, paras. 3 and 6, of the Rules of the Court provides that one-half hour is allowed for the argument of cases on the summary docket and that in such cases only one counsel will be heard on the same side. We are informally advised by the Clerk that where, as here, there are two respondents, they may divide the allotted half hour. A division of time is, we believe, necessary, but we think that a limitation of our total time to a half hour would seriously prejudice the presentation of our cases.

It is therefore requested that the motion be granted.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

Attorney for the respondent J. Howard McGrath, Attorney General of the United States.

ROGER J. WHITEFORD,
JOHN J. WILSON.

Attorneys for Respondent, Societe Internationale Pour Participations Industrielles et Commerciales, S. A., etc.

Address: 815 15th St. N. W.
Washington, D. C.

October 31, 1951.